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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Cellular Service and Other Commercial)
Mobile Radio Services in the Gulf of Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing of)
Applications for Unserved Areas in the)
Cellular Service and to Modify Other)
Cellular Rules)

CC Docket No. 90-6

To: The Commission

REPLY COMMENTS
OF
SHELL OFFSHORE SERVICES COMPANY

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SUMMARY

While some of the parties that filed Comments in this proceeding expressed opposition to and/or reservations about the Federal Communications Commission's proposal to license non-cellular commercial mobile radio service spectrum in the Gulf of Mexico, they presented no valid grounds for not licensing such spectrum. In fact, notwithstanding the contrary claims made in some Comments, the record in this proceeding demonstrates that there is a large and growing need for additional non-cellular CMRS spectrum in the GOM. Thus, Shell Offshore Services Company urges the Commission to proceed as quickly as possible with the licensing of such spectrum, except Personal Communications Service spectrum, in the GOM.

As explained in SOSCo's Comments, non-cellular CMRS licenses issued for the GOM should be separate from licenses authorizing operation in adjacent areas on land, and the licenses should authorize operation throughout the entire GOM. The reasons for this, among others, are that: (1) the GOM is a unique environment that logically should be treated as a single area for licensing purposes; and (2) the proposed division between a Coastal and an Exclusive Zone might discourage some CMRS providers from serving the GOM.

Despite the foregoing, many land-based non-cellular CMRS licensees serving areas that abut the GOM filed Comments in which they argued that their licenses authorize them to serve some or all of the portion of the GOM adjacent to their

land-based service areas. There is no validity to these arguments. The GOM never was included, either expressly or by implication, in the service areas granted to land-based licensees. To the extent these licensees have relied on the erroneous assumption that they are authorized to serve the GOM, or that no licenses would be issued for the GOM, they did so at their own risk. There is no reason why the Commission should allow such licensees to rely upon their misguided assumptions to usurp areas not covered by their licenses and, thereby, block others from obtaining licenses to serve the growing needs of the entire GOM (not just the coastal regions the land-based licensees may serve).

Other parties filed Comments that opposed the Commission's proposal to license non-cellular CMRS spectrum in the GOM because of concerns that water-based licensees would cause interference to land-based licensees and/or require that land-based licensees retrofit their facilities to avoid causing interference to water-based licensees. Again, there is no validity to these concerns. The boundary between the GOM and land-based service areas is no different from other service area boundaries where the Commission has been able to establish workable interference protection standards. There is no reason why it cannot and should not do the same for the boundaries between the GOM and land-based service areas. Moreover, if land-based licensees need to retrofit their facilities to avoid causing interference to water-based licensees because they erroneously assumed no non-cellular CMRS licenses ever would be issued in the GOM, so be it. Land-based licensees should not be allowed to block the licensing of much needed non-cellular

CMRS spectrum in the GOM simply because they mistakenly assumed no such spectrum would be licensed in the GOM.

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To: The Commission

REPLY COMMENTS
OF
SHELL OFFSHORE SERVICES COMPANY

Shell Offshore Services Company ("SOSCo"), by its attorneys, hereby submits these Reply Comments in response to the Second Further Notice of Proposed Rule Making ("Second FNPRM") adopted by the Federal Communications Commission ("Commission") in the above-captioned proceeding on March 28, 1997.^{1/} As explained below, a careful analysis of the Comments filed with the Commission in this proceeding demonstrates that there is a large and growing need for additional commercial mobile

^{1/} FCC 97-110 (released: April 16, 1997). The original filing deadline for Reply Comments was July 2, 1997, but the Commission extended the deadline to August 4, 1997, in an Order adopted on May 30, 1997. DA 97-1143 (released: May 30, 1997).

radio service ("CMRS") spectrum, except Personal Communications Service ("PCS") spectrum, in the Gulf of Mexico ("GOM") and that, notwithstanding the claims made in many of the Comments, licensing this spectrum in the GOM will not adversely impact any of the existing CMRS licensees operating in or near the GOM.

I. BACKGROUND

1. On July 2, 1997, SOSCo filed Comments with the Commission in response to the Second FNPRM. In those Comments, SOSCo urged the FCC to license all non-cellular CMRS spectrum, except PCS spectrum, in the GOM. SOSCo demonstrated that, due to a recent resurgence of petroleum and natural gas exploration and production activity in the GOM, there is a large and growing need in the GOM for such spectrum. Because much of the spectrum used to provide PCS already is being heavily used by companies in the petroleum and natural gas industries for point-to-point microwave applications, and because these companies make up most of the population in the GOM, SOSCo urged the Commission not to license PCS spectrum in the GOM. SOSCo Comments at pp. 5-9.

2. Among other things, SOSCo's Comments also urged the Commission to issue non-cellular CMRS licenses in the GOM that authorize operation throughout the entire GOM. SOSCo explained that dividing the GOM into a Coastal and Exclusive Zone as proposed by the Commission in the Second FNPRM would create a disincentive

for some CMRS providers to serve the GOM and place an unnecessary burden on users of non-cellular CMRS spectrum in the GOM. The reason for this is that, if the GOM is divided into two zones, many CMRS providers will be unable to offer affordable service to a sufficient number of users to justify the large scale investment in site rentals and equipment needed to serve the GOM, and some of the users in the GOM will be forced to take service from multiple service providers to obtain seamless service throughout the GOM. SOSCo Comments at pp. 9-11.

3. In addition to SOSCo, approximately 30 other parties filed Comments in response to the Second FNPRM. A number of the parties focused exclusively on the cellular issues raised in the Second FNPRM and did not address whether licenses for non-cellular CMRS spectrum should be issued in the GOM. Of the parties that did address the issue of licensing non-cellular CMRS spectrum in the GOM, most generally fell into three categories. First, a number of parties, including the American Petroleum Institute ("API"), supported licensing non-cellular CMRS spectrum, except PCS spectrum, in the GOM. See, e.g., API Comments at pp. 7-8. Second, the only existing non-cellular CMRS licenses in the GOM to file Comments, Petroleum Communications, Inc. ("PetroCom"), opposed issuance of additional non-cellular CMRS licenses in the GOM because, among other things, it claimed that issuance of such additional licenses might harm the economic performance of the wireless market in the GOM. PetroCom Comments at pp. 16-19. Finally, land-based non-cellular CMRS licensees, such as Nextel Communications, Inc. ("Nextel"), opposed licensing some or all non-cellular

CMRS spectrum in the GOM for a variety of reasons, including the claimed likelihood of interference to land-based licensees and the fact that many land-based licensees claim that they already are authorized to serve some or all of the GOM. See, e.g., Nextel Comments at pp. 3-5.

II. REPLY COMMENTS

4. While some of the parties that filed Comments in this proceeding expressed opposition to and/or reservations about the Commission's proposal to license non-cellular CMRS spectrum in the GOM, SOSCo does not believe that they have presented any valid grounds for not licensing such spectrum. As explained below, there simply is no reason why the Commission should not proceed as expeditiously as possible with the licensing of all non-cellular CMRS spectrum in the GOM except PCS spectrum.^{2/}

^{2/} As explained in its Comments, SOSCo does not believe the Commission should license PCS spectrum in the GOM. SOSCo Comments at pp. 7-8. Accordingly, in the remainder of these Reply Comments, SOSCo does not address the arguments made regarding the issuance of PCS licenses in the GOM, and all references to non-cellular CMRS spectrum exclude PCS spectrum unless otherwise indicated.

A. The Commission Should License All Non-Cellular CMRS Spectrum in the GOM

5. Absent some compelling justification, SOSCo believes that any spectrum licensed in the rest of the United States also should be licensed in the GOM. Generally, there is no justification for issuing licenses in some areas and not others. Nonetheless, this is exactly what the Commission has done with respect to the GOM by excluding it from all spectrum auctions except the recently concluded Wireless Communications Service ("WCS") auction. SOSCo urges the Commission to remedy this situation by licensing all non-cellular CMRS spectrum in the GOM.

1. There is a Large and Growing Need for Non-Cellular CMRS Spectrum in the GOM

6. As an initial matter, the Commission should not require a demonstration of demand before licensing non-cellular CMRS spectrum in the GOM.^{3/} As noted by SOSCo in its Comments, no such demonstration was required before the Commission licensed such spectrum in other insular, lightly populated areas like the Northern Mariana Islands, and there is no reason why a demonstration of demand should be required for the

^{3/} In the Second FNPRM, the Commission asked for comment on whether there is sufficient demand for PCS and paging in the GOM to justify licensing the spectrum used to provide those services in the GOM. Second FNPRM at ¶¶ 60 and 63.

GOM. Whether there is demand for spectrum in certain areas is a matter that should be decided by the market, not the Commission. If spectrum is made available for licensing in some areas, it should be made available for licensing in all areas absent a compelling justification. SOSCo Comments at pp. 7-8.

7. Even though the Commission should not require a demonstration of demand before licensing non-cellular CMRS spectrum in the GOM, the record established in the Comments shows that there is a large and growing demand for such spectrum, especially Specialized Mobile Radio ("SMR") service spectrum, in the GOM. API, the trade association for the petroleum and natural gas industries, stated in its Comments "that there is more than adequate demand for SMR services in the [GOM] to warrant the assignment of SMR licenses . . ." API Comments at p. 7. Because the population of the GOM consists primarily of companies involved in the petroleum and natural gas industries, API's position with regard to the demand for licensing non-cellular CMRS spectrum should be conclusive proof that such demand exists in the GOM.

8. The Comments of other parties also demonstrate that sufficient demand exists to justify the licensing of non-cellular CMRS spectrum in the GOM. A number of those parties, including Palmer Wireless, Inc. ("PWI"), supported the Commission's proposal to license competitors to cellular in the GOM. PWI Comments at p. 16. Moreover, many land-based non-cellular CMRS licensees filed Comments arguing that their licenses authorize them to serve the portion of the GOM that abuts their land-based service areas and that they already are providing service in the GOM. While these parties

opposed the issuance of water-based non-cellular CMRS licenses for reasons discussed below, they claimed that the issuance of water-based licenses would deprive them of a valuable portion of their service areas. See, e.g., Sprint Spectrum L.P. Comments at pp. 2-4. Clearly, these Comments demonstrate strong demand in the GOM for non-cellular CMRS spectrum.

9. Another indicator of the demand for non-cellular CMRS spectrum in the GOM is the recently concluded WCS auction. As the Commission is aware, this was the first and only auction to include the GOM, and SOSCo was the high bidder on all four WCS licenses in the GOM. The total amount of SOSCo's high bids on the GOM licenses, \$826,000, was significantly greater than the amounts of the bids on most of the other licenses, and the number of parties bidding on the GOM licenses, as well as the level of bidding activity on those licenses, were greater than with respect to almost all of the other licenses. None of this would have happened if there was no demand for non-cellular CMRS spectrum in the GOM.

10. Relatedly, SOSCo's own experience as the largest provider of point-to-point common carrier microwave services in the GOM supports the conclusion that there is sufficient demand to warrant licensing non-cellular CMRS spectrum in the GOM. For one thing, SOSCo can state emphatically that Shell Oil Company, SOSCo's parent company and the company with the largest presence in the GOM, desperately wants the Commission to make non-cellular CMRS spectrum available for licensing in the GOM. Moreover, many companies in the petroleum and natural gas industries have

informally told SOSCo that they would like to see additional non-cellular CMRS spectrum, especially SMR spectrum, made available for licensing in the GOM. Indeed, as the Commission has made increasing amounts of CMRS spectrum available through auctions in the rest of the United States, SOSCo has noticed a growing level of frustration within the petroleum and natural gas industries at the fact that the GOM has been excluded from all but one of these auctions.

2. Demand for Non-Cellular CMRS Spectrum in the GOM Should Continue to Increase as Overall Activity in the GOM Increases

11. Demand for non-cellular CMRS spectrum in the GOM, as well as most other types of radio spectrum, is driven primarily by the petroleum and natural gas industries. As described in SOSCo's Comments, the level of petroleum and natural gas exploration and production activity in the GOM has increased dramatically in the past three years as the petroleum and natural gas industries have moved their operations into increasingly deeper waters, and this trend is expected to continue for the foreseeable future. SOSCo Comments at pp. 5-6; see also Gulf is the Heart of Deepwater Drilling, Houston Chronicle, May 4, 1997, at pp. 1J and 4J.

12. To put the current level of petroleum and natural gas exploration and production activity in the GOM into perspective, two maps are attached to these Reply Comments that graphically depict the level of activity. The first map, labeled Map A,

shows all of the locations in the GOM where structures of some sort or another have been erected by companies in the petroleum and natural gas industries.^{4/} Each purple square on the map represents a three square mile area in which there is at least one, sometimes dozens, of such structures. There currently are approximately 5,300 structures, many of them located more than 100 miles from the coastline, stretching from Texas to Alabama. Almost all of these structures, whether manned or unmanned, require some form of telecommunications service.

13. The other map, labeled Map B, shows all of the mineral leases held by companies in the petroleum and natural gas industries in the GOM.^{5/} Each block on the map covers a three square mile area. The green blocks represent leases held along the continental shelf, and the blue blocks represent the leases for deepwater areas beyond the continental shelf. The yellow blocks represent leases held for areas in state waters. The map clearly shows that leases have been issued authorizing exploration and production

^{4/} The map only shows structures located outside the coastal waters of the states that border the GOM. The coastal waters generally are more congested than the deeper waters, but SOSCo does not have information on the structures in coastal waters. The map was developed using information provided by the Mineral Management Service, part of the Department of the Interior, which oversees the exploration and production activities of the petroleum and natural gas industries in the GOM.

^{5/} Leases outside the coastal waters of the states bordering the GOM are obtained from the Mineral Management Service, and they authorize the lease holders to extract petroleum and natural gas in the areas covered by the leases. The states, on the other hand, grant leases for those areas subject to their jurisdiction.

activity all across the GO, and that vast acreage in deepwater areas now has been leased. Altogether, there currently are more than 8,000 leases in the GOM.

14. Despite this large and growing level of activity in the GOM, there currently are only two water-based CMRS licensees serving the non-coastal regions of the GOM. These licensees are the two cellular licensees, PetroCom and Bachow/Coastel, L.L.C., authorized to serve the GOM.^{9/} Accordingly, SOSCo believes that there is adequate justification for the Commission to issue licenses for non-cellular CMRS spectrum in the GOM.

3. Claims Regarding a Lack of Demand for Non-Cellular CMRS Spectrum in the GOM are not Supported by Reliable Evidence

15. PetroCom purported to show in its Comments that, among other things, there is insufficient demand for non-cellular CMRS spectrum in the GOM to warrant licensing such spectrum in the GOM. PetroCom Comments at pp. 16-19. In support of this contention, PetroCom attached a report to its Comments that was prepared by Larry Darby, the so-called Darby Report, that argues against licensing non-cellular CMRS spectrum in the GOM, at least for the next five to seven years, because this might "reduce

^{9/} To the extent site specific SMR licenses have been issued in the GOM, SOSCo notes that, to the best of its knowledge, none of these licenses currently are being used to provide service in the GOM.

the expected economic performance of the wireless market in the [GOM]." Darby Report at p. 3. These conclusions are invalid and irrelevant.

16. By its own admission, many of the conclusions reached in the Darby Report are "tentative and impressionistic" due to the lack of any reliable data concerning the telecommunications market in the GOM. Darby Report at p.10, n. 16. Indeed, the only hard data contained in the Report was gleaned from a study prepared by Spears & Associates in February 1990. Given the date this study was prepared, the data contained therein probably is eight to 10 years old by now. Due to the changes that have occurred in the GOM since that time, especially the recent resurgence of exploration and production activity, the Spears & Associates study is no longer reliable.

17. It also is important to note that the conclusions reached in the Darby Report generally are inconsistent with SOSCo's own experience in the GOM and the record established in this proceeding. As described above, there is overwhelming evidence of a large and growing need for non-cellular CMRS spectrum in the GOM. Because PetroCom is one of only two water-based CMRS licensees currently operating in the GOM, its motives for not wanting the Commission to license non-cellular CMRS spectrum in the GOM are clear. PetroCom does not want the Commission to license spectrum that could be used by other telecommunications service providers, such as SOSCo, to provide competing services in the GOM.

18. More importantly, even if the conclusions reached in the Darby Report were true, they would not provide a basis for not licensing non-cellular CMRS spectrum

in the GOM. A careful reading of the report shows that the real concern with licensing such spectrum in the GOM is that it could undermine the economic viability of existing service providers. The report also concluded that licensing such spectrum will not lead to "substantial improvement in market performance and user welfare." Darby Report at p. 3. In other words, PetroCom is claiming that it already is serving the needs of users in the GOM and that, if the Commission were to license competitors, its economic performance might be harmed.

19. The arguments advanced by PetroCom are similar to those advanced by AT&T in the 1960s and 1970s when it first began to face competition. The arguments also mirror those made by one of SOSCo's competitors, Rig Telephones, Inc. d/b/a DATACOM, last year when SOSCo applied for licenses to provide common carrier point-to-point microwave services in the GOM. In both situations, the Commission rejected the self-serving arguments of the incumbent service providers. See, e.g., Shell Offshore Services Company: Applications for Authority to Operate Common Carrier Digital Microwave Stations in the 5925-6425 MHz and 6525-6875 MHz Frequency Bands, 11 FCC Rcd 10119 (1996) ("SOSCo Order").^{7/} It should do so again in this situation.

^{7/} The SOSCo Order is instructive on this point. Specifically, the Commission concluded that "it is improper, as DATACOM suggests, to prevent companies prepared to invest the substantial sums required to meet the growing demand for telecommunications services in the Gulf of Mexico from providing such services on the basis that an existing carrier might also be able to provide the same service, particularly in an area important to the vitality of the U.S. economy." SOSCo Order, 11 FCC Rcd at 10129.

B. The Commission Should Issue Non-Cellular CMRS Licenses for the GOM That Authorize Operation Throughout the Entire GOM

20. As explained in SOSCo's Comments, the Commission should not adopt its proposal to divide the GOM into a Coastal and Exclusive Zone when issuing non-cellular CMRS licenses. All non-cellular CMRS licenses issued for the GOM should authorize operation throughout the entire GOM. SOSCo Comments at pp. 9-11.

21. The GOM is a unique environment that logically should be treated as a single area for licensing purposes. Its population is transient and almost exclusively industrial. Most of this population has interests in both the proposed Coastal and Exclusive Zones. For this reason, much of the GOM's population could be required to take service from multiple service providers, one in the Coastal Zone and the other in the Exclusive Zone, to obtain seamless service throughout the entire GOM if the GOM is divided as proposed. This would be inefficient and contrary to the public interest.

22. Moreover, the creation of a Coastal and Exclusive Zone might discourage some CMRS providers from venturing into the GOM. It is extremely costly for telecommunications service providers to lease tower space in the GOM and to maintain equipment in the GOM's harsh environment. Therefore, only by licensing the GOM as a single region will many CMRS providers be able to offer affordable service to a sufficient number of users to justify the large scale investment in site rentals and equipment needed to serve the GOM.

1. The Commission Should Reject the Claims of Land-Based Non-Cellular CMRS Licensees Regarding Their Authority to Serve Adjacent Areas in the GOM

23. Many land-based non-cellular CMRS licensees serving areas that abut the GOM filed Comments in which they argued that their licenses authorize them to serve some or all of the portion of the GOM adjacent to their land-based service areas. These parties, SMR and paging licensees with geographic area licenses, generally argued that the Commission should not issue separate water-based non-cellular CMRS licenses for the GOM because, if it does, it will reduce the size of the land-based licensees' service areas and deprive them of part of the value of their licenses. In general, these parties argued that, because their service areas are based on Rand McNally's Metropolitan Trading Areas ("MTAs") and/or Basic Trading Areas ("BTAs"), and because Rand McNally defined the MTAs and BTAs along county/parish lines, their licenses authorize them to serve all areas over which the subject counties/parishes have jurisdiction, including the area extending out from the coastline some three to nine miles into the GOM. See, e.g., DW Communications, Inc. Comments at pp. 2-4.

24. The arguments of the land-based non-cellular CMRS licensees are disingenuous. At no time did the Commission, either expressly or by implication, indicate that the service areas of non-cellular CMRS licensees issued on an MTA or BTA basis include the GOM. The Commission merely referred to Rand McNally's MTA and BTA definitions. These definitions consist of various counties/parishes, but make no

mention of the GOM. In addition, the map Rand McNally uses to visually delineate the various MTAs and BTAs does not cover any portion of the GOM. Rather, the map stops at the coastline. See Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Ed., at pp. 36-39. Under these circumstances, SOSCo is at a loss to understand why land-based licensees think they have a right to serve any portion of the GOM.^{8/}

25. Moreover, even if Rand McNally intended for MTAs and BTAs along the GOM to extend some three to nine miles into the GOM, the Commission can and should exercise its discretion by excluding the GOM from the service areas of land-based licensees. The Commission has used this discretion in the past to create MTA-like and BTA-like areas, such as when it established Guam as a separate MTA for purposes of the 900 MHz SMR auction, to create logical licensing rules for insular areas like the GOM. See 47 C.F.R. §90.7 (1997). The Commission also has used this discretion to carve certain areas off of established MTAs, as it did when it separated Alaska from the Seattle MTA for purposes of the 900 MHz SMR auction, when logic so required. Id. SOSCo, therefore, urges the Commission to take similar action if needed to preserve the GOM as a separate, distinct area for licensing non-cellular CMRS spectrum.

26. Many of the land-based non-cellular CMRS licensees asserting authority to serve portions of the GOM cite a recent Commission decision involving the GOM. At

^{8/} It should be noted that the specious logic employed by these licensees apparently would not apply to geographic area licenses not based on Rand McNally's MTAs and BTAs. In other words, according to these licensees, an Economic Area license seemingly would not cover any part of the GOM.

issue in the decision was whether a microwave station in the GOM was entitled to primary or secondary for purposes of relocation by PCS licensees. Applications of Mobil Oil Telecom, Ltd. for Private Operational-Fixed Microwave Service Stations WNTG 997 and WNTZ 385 at Mobile Bay in Block 869 in the Gulf of Mexico, 11 FCC Rcd 4115 (1996). While it is true there is dicta in the decision regarding the eligibility of land-based PCS licensees to serve the GOM, the land-based licensees fail to mention that the decision had nothing to do with that issue. By contrast, in the Second FNPRM, the Commission specifically addressed the issue of whether land-based non-cellular CMRS licensees are authorized to serve the GOM, and concluded that "no provision has been made for the licensing of [non-cellular CMRS spectrum] in the Gulf." Second FNPRM at ¶ 60. SOSCo agrees with the Commission's position in the Second FNPRM on this issue.

27. Some of the parties asserting authority to serve the GOM also claimed in their Comments that, by virtue of the fact that the GOM was not included in the initial auction of some non-cellular CMRS spectrum, they assumed the spectrum never would be auctioned in the GOM and that, therefore, they could serve the GOM. See, e.g., DW Communications, Inc. Comments at pp. 2-4. It is unclear to SOSCo, however, why these licensees would make such an assumption. For one thing, as indicated above, the Commission has issued a number of site specific SMR licenses in the GOM. It is baffling, therefore, why anyone would assume that geographic area SMR licenses never would be issued in the GOM. This is especially true in light of the fact that, as long ago

as the early 1980s, the Commission issued two geographic area cellular licenses in the GOM and, more recently, issued geographic area WCS licenses in the GOM. Moreover, it would seem logical that, rather than making assumptions about the scope of geographic area licenses, anyone bidding large sums of money at auction for such licenses would seek to clarify the scope of the licenses before the auction to avoid paying for something not being auctioned. Ultimately, there is no reason why the Commission should allow land-based non-cellular CMRS licensees to rely upon their misguided assumptions to usurp areas not covered by their licenses.

28. If the Commission acquiesces to the demands of land-based non-cellular CMRS licensees and allows them to serve the GOM, it is likely that most of the GOM never would be served by those licensees. As is evident from the Comments filed in this proceeding, land-based licensees want the flexibility to serve whatever areas in the GOM they can reach using land-based transmitters, thereby enhancing their profitability, but they have no intention of trying to serve the growing needs of the petroleum and natural gas industries outside coastal areas. Indeed, it seems unlikely that these licensees understand what is happening in the GOM outside the coastal area, or that they could successfully provide service in the GOM's unique and challenging environment. Therefore, to concede the GOM to existing land-based licensees is likely to have a disastrous impact on the ability of the petroleum and natural gas industries to obtain service in most of the GOM.

29. Finally, for reasons already explained below, SOSCo would oppose any attempt by the Commission to allow land-based non-cellular CMRS licensees to serve the coastal areas of the GOM, and to issue a separate license only for the remainder of the GOM. Dividing the GOM between a coastal and deepwater zone would impair the ability of licensees to serve the deepwater areas in a way that is economically viable.^{2/}

2. The Commission Should Reject the Claims of Land-Based Non-Cellular CMRS Licensees Regarding the Adverse Impacts of Licensing Non-Cellular CMRS Spectrum in the GOM

30. A number of parties filed Comments in this proceeding that opposed the Commission's proposal to license non-cellular CMRS spectrum in the GOM because of purported concerns that water-based licensees would cause interference to land-based licensees and/or require that land-based licensees retrofit their facilities to avoid causing interference to water-based licensees. According to these parties, land-based licensees have designed their facilities on the assumption that no water-based licenses ever would be issued, and issuance of water-based licenses at this time would impose enormous costs on land-based licensees. See, e.g., DW Communications, Inc. Comments at pp. 4-7.

^{2/} It generally is easier and more lucrative to serve the shallower coastal waters than it is to serve the deepwater areas. This is especially true if a licensee is able to serve those waters using land-based transmitters. By contrast, it is far more difficult and capital intensive to serve the deepwater areas of the GOM. As such, if land-based licensees are allowed to "cherry-pick" the coastal areas using their land-based transmitters, the ability of water-based licensees to serve the deepwater areas would be undermined.

31. The Commission should not be deterred from issuing non-cellular CMRS licenses in the GOM by these arguments. For one thing, the boundary between the GOM and land-based service areas is no different from other service area boundaries where the Commission has been able to define workable interference protection standards. There is no reason why it cannot and should not do the same for the boundaries between the GOM and land-based service areas. Generally, however, SOSCo believes that the existing service and operational requirements applicable to land-based non-cellular CMRS licensees should apply to such licensees in the GOM. See SOSCo Comments at p. 12.

32. In the event that the Commission licenses non-cellular CMRS spectrum in the GOM, the fact that some land-based non-cellular CMRS licensees may need to retrofit their facilities to avoid causing interference to water-based licensees should not stop the Commission from issuing such licenses. If land-based licensees need to retrofit their facilities because they erroneously assumed no water-based licenses ever would be issued, so be it. Land-based licensees should not be allowed to block the licensing of much needed non-cellular CMRS spectrum in the GOM simply because they mistakenly assumed no such spectrum would be licensed in the GOM.

III. CONCLUSION

33. Notwithstanding the arguments made by some of the parties that filed Comments in this proceeding, there are no valid grounds for not licensing non-cellular

CMRS spectrum in the GOM. SOSCo, therefore, urges the Commission to proceed as quickly as possible with the licensing of all such spectrum, except PCS spectrum, in the GOM. All non-cellular CMRS licenses issued for the GOM should be separate from the licenses authorizing operation in adjacent land-based areas, and they should authorize operation throughout the entire GOM. The service and operational requirements applicable to land-based non-cellular CMRS licensees should apply to such licensees in the GOM.